IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4129 OF 2021

WITH

INTERIM APPLICATION NO.4131 OF 2021

IN

SECOND APPEAL NO.185 OF 2011

Laxman Bali Avghade (Mang) (since deceased through LRs) Tanubai L. Avghade (since deceased through LRs) Manaji L. Avghade & Ors.	..	Applicants

Versus

Appa Shiva Avghade (Mang) (since deceased through LRs) Anandrao Appa Avghade (Mang) (since deceased through LRs) Anshuya A. Avghade & Ors.	..	Respondents

...

Mr.Siddhartha R. Ronghe for the Applicants.

Mr.Rajesh Kachare for the Respondent No.3B.

Mr.Vikas G. Kumbhar for the Respondent Nos.1B to 1I.

...

CORAM: BHARATI DANGRE, J.
DATED : 21st MARCH, 2022

P.C:-

INTERIM APPLICATION NO.4129 OF 2021

1. The applicants/original respondents in the proceedings have taken out the application in the light of certain subsequent events and according to them, these events lie in

the teeth of the order dated 08/04/2013 when the appeal was admitted. The learned counsel for the applicants submits that when the appeal was admitted on 08/04/2013, the interim order granted on 25th March, 2013 was directed to be continued till the final disposal of the appeal.

The order dated 25/03/2011 particularly records as under :-

> "3. In the meanwhile, the execution proceedings are not stayed. However, the possession may not be handed over to the respective parties."

2. The contingency for taking out the application arose, since the applicants gained the knowledge that in order to defeat their rights, the appellants have created encumbrances over the entire property i.e. Gat No.5 admeasuring 64.80 R in favour of the Credit Co-Operative Society to the tune of Rs.10,00,000/- and have availed a loan facility. Apart from this, on properties located at 172/1/1 and 172/1/3 have also been encumbered to avail the loan of Rs.7,00,000/- from the financial institution. Alongwith the application, copies of 7/12 extract, recording respective entries, are placed on record.

3. The respondent (original appellant) has responded to the application by filing an affidavit dated 19/01/2022, where he specifically deny creation of any encumbrances and without prejudice to the said statement, has committed himself by stating that the encumbrances, in any case, will not act against the share of the present applicants/original respondents. Para

7 of the affidavit contains the following statements :-

> "7. With reference to paragraph 6, I deny that the Appellant/present Respondent in IA are taking undue advantage of the pendency of the present second appeal are in pursuit to defeat the rights of the Applicants herein. I respectfully say and submit that the ld. Trial court has rightly held that the Applicant/Original Respondent have no right in the suit property. I deny that the Appellant/present Respondent in IA have created third party interest and/or encumbrance in the suit properties as alleged. I say that financial institution has only recorded the amount give to the Appellant/present Respondent in IA. I respectfully say and submit that even assume without admitting that the Applicant has share in the suit properties, the share of the Applicant can not be disturb against the loan amount and same can be only against the share of the Appellant/present Respondent in IA."

4. In the wake of the said statements, since the respondent is categorically stating on oath that the share of the applicants is not encumbered and shall not be encumbered even in future, the application stands disposed off.

(SMT. BHARATI DANGRE, J.)

M.M.Salgaonkar